IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

OP.No. 38839 of 2002(W)

PETITIONER:

C.V. THOMAS (FORMERLY HEAD CLERK),
LADRUM ESTATE, PEERMADE.

BY ADV. SRI.ASOK M.CHERIAN.

RESPONDENTS:
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1. **THE LABOUR COURT, ERNAKULAM.**

2. **THE MANAGER, LADRUM ESTATE,**
   HOPE PLANTATIONS, PEERMADE.

3. **THE STATE OF KERALA, REPRESENTED**
   BY THE SECRETARY TO GOVERNMENT,
   LABOUR AND REHABILITTION (A) DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P.N. SANTHOSH FOR R1 & R3,
ADV. SRI.JOSEPH KODIANTHARA FOR R2.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 65439/2002 IN O.P. NO. 38839/2002-W

DISMISSED

25/10/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE AWARD DTD. 13/11/01 OF THE LABOUR COURT, ERNAKULAM IN INDUSTRIAL DISPUTE NO. 27/1987.

EXT.P.2: COPY OF THE LETTER OF THE PETITIONER SUBMITTED BEFORE THE R.2. DTD. 20/09/1985.

EXT.P.3: COPY OF THE CHARGE-SHEET ISSUED TO THE PETITIONER DTD. 23/11/1985.

EXT.P.4: COPY OF THE WORK SCHEDULE ISSUED BY THE R.2.

EXT.P.5: COPY OF THE ORDER OF THE R.2. DTD.2 9/07/1986 DISMISSING THE PETITIONER FROMS SERVICE.

EXT.P.6: COPY OF THE COMMON JUDGMENT DTD. 22/12/1993 IN O.P 8063/91 AND 11007/1991 OF THIS HONOURABLE COURT.

EXT.P.7: COPY OF THE COMMON JUDGMENT DTD. 10/07/1998 OF THIS HONOURABLE COURT IN WRIT APPEAL NOS. 608/94 AND 675/94.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.38839 of 2002-W

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Dated this the 25th day of October, 2007.

JUDGMENT

1.The petitioner was a Head Clerk in the service of the second respondent. He was charge-sheeted for certain financial irregularities in connection with the supervision of the construction of a bungalow, being a supervisory staff. The terms of agreement between the second respondent and the contractor, who was engaged to construct the building, included the entitlement of the management to adjust the costs of materials against payments due to the contractor under the terms between them.

2.With the passage of time, it appears that the management took the view that the petitioner, as the Head Clerk, had not properly supervised the

transactions and also had involved in certain activities by which it had lost confidence in the petitioner and still further, that he was guilty of different counts of indiscipline, including misappropriation. A domestic enquiry was instituted. A learned member of the Bar was appointed as the Enquiry Officer. He conducted enquiry. I have gone through the enquiry report. The thrust of the findings in the enquiry is more on lack of supervision and lack of control by the petitioner as the Head Clerk rather than whatever little is stated in the enquiry report regarding the allegation of actual misappropriation. On the basis of that enquiry report, the petitioner was dismissed from service. This led to proceedings before the Labour Court in which the enquiry proceedings were found to be sustainable. But, the Labour Court ordered the punishment of dismissal to be a punishment of discharge, having regard to the fact that the petitioner had contributed nearly three decades of his life serving the second respondent and had hardly

three years to retire by that time. There were a writ petition and a writ appeal arising from that award. On further remit, as per the impugned award, the Labour Court has stated, by its earlier finding, that there was no violation of the principles of natural justice in conducting the enquiry and there was no reason to interfere with the findings in the enquiry. Having upheld the domestic enquiry, the Labour Court exercised authority under Section 11A of the Industrial Disputes Act and moulded relief by modifying punishment of dismissal from service as that of discharge, having regard to the long service of the petitioner and the period that was left for him to continue in service.

3. As of now, the petitioner is in his late 70s. Having heard the learned counsel for the petitioner and the learned standing counsel for the management, it appears that at this distance of time, though the petitioner has prayed for reinstatement, the essential issue is that he is

more perturbed by the finding of guilt of having committed financial misappropriation. It appears to be more of a heart burn to face such a finding rather than suffer the consequences of the order of discharge from service on the basis of the impugned award.

4.As already noticed, the thrust of the enquiry report is that the petitioner was essentially carrying on a supervisory function and in the course of that function, there were certain failures on his part. In fact, the Enquiry Officer does not positively conclude that the petitioner had, as a matter of fact, misappropriated any specific amount. Even if the finding of guilt of misappropriation, as such, is to be upset by some judicial proceedings, it will well be within the power of the management to decide that it shall not have a person whom it had discharged on counts of financial irregularities, to continue in service. It is in this context, the concept of non-stigmatic

cessation of service is applied where the management would call it a day, in the matter of engaging an employee on the ground that it does not continue to have absolute faith in that particular workman. The totality of the facts and circumstances of the case, in the backdrop of the evidence adduced before the Enquiry Officer and the nature of the findings in the enquiry report, shows an overwhelming thrust in favour of holding that the situation in hand is one where the management could have given the petitioner a non-stigmatic exit.

5. Having regard to what is aforesaid, all findings in the impugned award and the enquiry report to the effect that the petitioner was guilty of financial misappropriation and other attendants charges, including lack of supervisory exercises are vacated and to that extent, the petitioner's discharge would be non-stigmatic. It is declared so sustaining the impugned award of the Labour Court in so far as it orders that the petitioner

shall be discharged from service. As a consequence of this judgment, the management will make available to the petitioner all benefits on account of his discharge, without delay.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN,J.

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O.P.No.38839 of 2002-W

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JUDGMENT

Dated: 25th October, 2007.